

The DSWG Proposal in a Nutshell

by Dick Thweatt

The proposal of the Development Standards Working Group (DSWG) includes 3 basic parts: (1) An “applicability” section defines what “developments” are regulated and protects owners’ rights in existing uses and parcels. (2) General development standards apply under all zoning designations across the entire Helena Valley planning area as defined in the county growth policy; (3) A “menu” of ten zoning designations that ranges from urban standards and densities in the area adjacent to the cities of Helena and East Helena, to densities determined by individual septic system requirements, to densities of one dwelling per 20, 40 or 160 acres where desired by landowners in the more rural parts of the planning area;

Applicability and Grandfather Provisions

The regulations would apply to any new subdivision, building activity or change of use requiring a wastewater permit in the Helena Valley planning area. Existing structures, uses and, to some extent, existing parcels, are exempted from the proposed regulations.

Any use or structure that exists and is lawful at the time these regulations take effect would be exempt. An existing structure destroyed by fire could be replaced on the same footprint. Existing structures that do not conform with some aspect of these regulations could be expanded under certain conditions for a grace period of five years after the effective date.

The regulations could not “eliminate the ability to develop” any existing tract of record or proposed subdivision lot that has received preliminary county approval. This means that the regulations could affect the manner in which an existing parcel is developed but could not preclude its development all together.

General Development Standards contain provisions addressing several key issues on an area-wide basis. The standards will be implemented by requiring a new “development permit” for new construction or additions of more than 50% of existing floor space.

Water Quality: Under current state regulations, “mixing zones” for septic drain fields may extend beyond the boundaries of the parcel and limit the ability to develop wells on neighboring parcels. A mixing zone is the area allowed by state regulations for effluents to mix with ambient water until the applicable standard is met.

Under the DSWG proposal, mixing zones must either be confined within the boundaries of the developed parcel, or the developer must provide for a recorded easement to exceed those boundaries, which would require the consent of the owner of the neighboring parcel.

This standard will protect the ability of adjacent property owners to use and develop their property. Existing parcels would be required to comply with this standard only to the extent that they can.

Streams, Lakes & Rivers: If possible, new structures would be required to locate a certain distance away from the high water mark of rivers, lakes and streams, and to retain a certain number of feet in a natural vegetative buffer next to the water. The larger the water body, the greater the setback and buffer requirement. For example, on class II streams such as Tenmile and Prickly Pear, the setback is 200 feet and the vegetativebuffer is 75 feet. This

standard protects people and property from flooding, and protects surface water quality, aquatic life and riparian habitat.

Wild Fire Hazard: In areas designated as having a “moderate, high or severe” wildfire hazard on the county’s fuel/fire hazard map, a plan for reducing fuels and providing defensible space must be developed and carried out prior to new construction. In areas of “high and severe” fire hazard, new structures are prohibited on slopes of 30% or steeper, or in certain ravines which draw fire like chimneys, or within 150 feet of the apex of such ravines. This standard protects people and property from fire, and protects fire fighters and tax payers from having to defend structures in overly hazardous locations.

Floodways and Floodplains: New structures are prohibited in floodways and in 100-year floodplains, except on existing tracts of record. This protects people and property from flooding up and down the stream.

Wildlife: New structures in the rural zones must be sited at least 200 feet away from important or critical wildlife habitat or travel corridors. These areas must first be identified on a map under development by the county in consultation with the Montana Department of Fish Wildlife & Parks which will become part of the county growth policy after public review and comment. This does not apply in the urban standards or community center zones.

Commercial Uses

The proposed standards would not affect existing commercial uses or home-based occupations. New commercial uses would be permitted only in community center zones; commercial-business-professional zones; and industrial use zones. Within these zones, commercial uses would be allowed only within 800 feet of an intersection of arterial or major collector streets, unless otherwise allowed under a neighborhood planning process. This standard promotes commercial nodes rather than commercial strips and would conserve the capacity of public roads and highways.

Big Box Stores: Commercial developments with more than 60,000 square feet of floor space would be allowed only in the commercial-business-professional zone or urban standards zone.
Sexy Sadie’s: Sexually oriented businesses would be allowed only under conditional use permits and only in certain zones, and would be banned within 1500 feet of schools, permitted day care facilities, hospitals, parks or places of worship.

The Zoning “Menu”

Urban Standards Zone: These are areas adjacent to municipalities where the city’s standards will apply and which are planned to eventually be annexed and served by municipal services. The intent is to make this the easiest and fastest place to develop so long as the development complies with county and city zoning regulations.

Community Center Zone: Think of these nodes of denser mixed use development as rural town sites that are not expected to become a part of a city in the near future, but where development is expected, eventually, to be served by community or public water and sewer systems, as opposed to individual well and septic systems. It may include both residential uses and nodes of small scale commercial uses.

Commercial-Business-Professional Zone: This zone is intended to include a wider variety of commercial, business and professional uses.

Industrial Use Zone: Self explanatory.

Rural Residential 1: The density in this residential zone would be determined by the sanitary requirements for individual wells and septic systems and the general standards for mixing zones and wells discussed above.

Five rural zoning designations provide for average densities of 5, 10, 20, 40 or 160 acres. Only one dwelling per the applicable number of acres is allowed in each of these rural zones unless a “density bonus” is earned by protecting open lands under the conservation standards.

Land Conservation The conservation standards are voluntary and designed to provide incentives for conserving open lands in rural areas by giving “density bonuses” for placing at least 50% of the area of the parcel to be developed under a perpetual conservation easement and “clustering” home sites in on the remainder of the parcel.